

AMENDED IN ASSEMBLY APRIL 20, 2006

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 2282

Introduced by Assembly Member Oropeza

February 22, 2006

An act to amend Section 650 of the Business and Professions Code, *and to amend Section 14107.2 of the Welfare and Institutions Code*, relating to health facilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 2282, as amended, Oropeza. Federally-qualified health centers.

Existing law, with certain exceptions, prohibits the offer, delivery, receipt, or acceptance by any healing arts licensee regulated by the Business and Professions Code or under the Chiropractic Initiative Act of any rebate, refund, commission, preference, patronage dividend, discount, or other consideration, as compensation or an inducement for referring patients, clients, or customers to any person. A violation of this provision is a crime.

This bill would provide that the offer, delivery, receipt, or acceptance of any consideration between a federally-qualified health center, as defined, and any individual or entity providing goods, items, services, donations, loans, or a combination thereof to the health center is not unlawful if the transaction otherwise is consistent with a specified federal law and meets certain requirements, including contributing to the ability of the health center to maintain or increase the availability or enhance the quality of services provided to a medically underserved population.

Existing law provides for the Medi-Cal program, which is administered by the State Department of Health Services and under which qualified low-income persons receive health care benefits.

Existing law provides that any person who solicits or receives any remuneration in return for the referral, or promised referral, of any individual to a person for the furnishing or arranging for the furnishing of any service, or merchandise for which payment may be made under the Medi-Cal program, or in return for the purchasing, leasing, ordering, or arranging for, or recommending the purchasing, leasing, or ordering of any goods, facility, service, or merchandise for which payment may be made under that program, is guilty of a crime, except as specified. Existing law further provides that any person who offers or pays any remuneration to refer any individual to a person for the furnishing or arranging for furnishing of any service or merchandise for which payment may be made under the Medi-Cal program, or to purchase, lease, order, or arrange for or recommend the purchasing, leasing, or ordering of any goods, facility, service, or merchandise for which payment may be made under that program, is guilty of crime, except as specified.

This bill would exempt from the above criminal provisions the offer, delivery, receipt, or acceptance of any consideration between a federally-qualified health center, as defined, and any individual or entity providing goods, items, services, donations, loans, or a combination thereof, to the health center entity pursuant to an agreement if that agreement contributes to the ability of the health center entity to maintain or increase the availability, or enhance the quality, of services provided to a medically underserved population served by the health center, and if the transaction otherwise meets the requirements of specified provisions of federal law.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 650 of the Business and Professions
- 2 Code is amended to read:
- 3 650. Except as provided in Chapter 2.3 (commencing with
- 4 Section 1400) of Division 2 of the Health and Safety Code, the
- 5 offer, delivery, receipt, or acceptance by any person licensed
- 6 under this division or the Chiropractic Initiative Act of any

1 rebate, refund, commission, preference, patronage dividend,
2 discount, or other consideration, whether in the form of money or
3 otherwise, as compensation or inducement for referring patients,
4 clients, or customers to any person, irrespective of any
5 membership, proprietary interest or coownership in or with any
6 person to whom these patients, clients, or customers are referred
7 is unlawful.

8 The payment or receipt of consideration for services other than
9 the referral of patients which is based on a percentage of gross
10 revenue or similar type of contractual arrangement shall not be
11 unlawful if the consideration is commensurate with the value of
12 the services furnished or with the fair rental value of any
13 premises or equipment leased or provided by the recipient to the
14 payer.

15 The offer, delivery, receipt, or acceptance of any consideration
16 between a federally-qualified health center, as defined in Section
17 1396d(l)(2)(B) of Title 42 of the United States Code, and any
18 individual or entity providing goods, items, services, donations,
19 loans, or a combination thereof, to the health center entity
20 pursuant to a contract, lease, grant, loan, or other agreement, if
21 that agreement contributes to the ability of the health center
22 entity to maintain or increase the availability, or enhance the
23 quality, of services provided to a medically underserved
24 population served by the health center, shall not be unlawful if
25 the transaction otherwise meets the requirements of the safe
26 harbor from the federal antikickback statute in Section
27 1320a-7b(b)(3) of Title 42 of the United States Code and
28 regulations adopted thereunder.

29 Except as provided in Chapter 2.3 (commencing with Section
30 1400) of Division 2 of the Health and Safety Code and in
31 Sections 654.1 and 654.2, it shall not be unlawful for any person
32 licensed under this division to refer a person to any laboratory,
33 pharmacy, clinic (including entities exempt from licensure
34 pursuant to Section 1206 of the Health and Safety Code), or
35 health care facility solely because the licensee has a proprietary
36 interest or coownership in the laboratory, pharmacy, clinic, or
37 health care facility; provided, however, that the licensee's return
38 on investment for that proprietary interest or coownership shall
39 be based upon the amount of the capital investment or
40 proportional ownership of the licensee which ownership interest

1 is not based on the number or value of any patients referred. Any
2 referral excepted under this section shall be unlawful if the
3 prosecutor proves that there was no valid medical need for the
4 referral.

5 “Health care facility” means a general acute care hospital,
6 acute psychiatric hospital, skilled nursing facility, intermediate
7 care facility, and any other health facility licensed by the State
8 Department of Health Services under Chapter 2 (commencing
9 with Section 1250) of Division 2 of the Health and Safety Code.

10 A violation of this section is a public offense and is punishable
11 upon a first conviction by imprisonment in the county jail for not
12 more than one year, or by imprisonment in the state prison, or by
13 a fine not exceeding fifty thousand dollars (\$50,000), or by both
14 that imprisonment and fine. A second or subsequent conviction is
15 punishable by imprisonment in the state prison or by
16 imprisonment in the state prison and a fine of fifty thousand
17 dollars (\$50,000).

18 *SEC. 2. Section 14107.2 of the Welfare and Institutions Code*
19 *is amended to read:*

20 14107.2. (a) Any person who solicits or receives any
21 remuneration, including, but not restricted to, any kickback,
22 bribe, or rebate, directly or indirectly, overtly or covertly, in cash
23 or in valuable consideration of any kind either:

24 (1) In return for the referral, or promised referral, of any
25 individual to a person for the furnishing or arranging for the
26 furnishing of any service or merchandise for which payment
27 may be made in whole or in part under this chapter or Chapter
28 8 (commencing with Section 14200); or

29 (2) In return for the purchasing, leasing, ordering, or
30 arranging for or recommending the purchasing, leasing, or
31 ordering of any goods, facility, service or merchandise for
32 which payment may be made, in whole or in part, under this
33 chapter or Chapter 8 (commencing with Section 14200) of this
34 part,

35 is punishable upon a first conviction by imprisonment in the
36 county jail for not longer than one year or state prison, or by a
37 fine not exceeding ten thousand dollars (\$10,000), or by both the
38 imprisonment and fine. A second or subsequent conviction shall
39 be punishable by imprisonment in the state prison.

1 (b) Any person who offers or pays any remuneration,
2 including, but not restricted to, any kickback, bribe, or rebate,
3 directly or indirectly, overtly or covertly, in cash or in valuable
4 consideration of any kind either:

5 (1) To refer any individual to a person for the furnishing or
6 arranging for furnishing of any service or merchandise for
7 which payment may be made, in whole or in part, under this
8 chapter or Chapter 8 (commencing with Section 14200); or

9 (2) To purchase, lease, order, or arrange for or recommend
10 the purchasing, leasing or ordering of any goods, facility,
11 service or merchandise for which payment may be made in
12 whole or in part under this chapter or Chapter 8 (commencing
13 with Section 14200),

14 is punishable upon a first conviction by imprisonment in the
15 county jail for not longer than one year or state prison, or by a
16 fine not exceeding ten thousand dollars (\$10,000), or by both the
17 imprisonment and fine. A second or subsequent conviction shall
18 be punishable by imprisonment in the state prison.

19 (c) Subdivisions (a) and (b) shall not apply to ~~either of the~~
20 following:

21 (1) Any amount paid by an employer to an employee, who has
22 a bona fide employment relationship with that employer, for
23 employment with provision of covered items or services.

24 (2) A discount or other reduction in price obtained by a
25 provider of services or other entity under this chapter or Chapter
26 8 (commencing with Section 14200), if the reduction in price is
27 properly disclosed and reflected in the costs claimed or charges
28 made by the provider or entity under this chapter or Chapter 8
29 (commencing with Section 14200). This paragraph shall not
30 apply to consultant pharmaceutical services rendered to nursing
31 facilities nor to all categories of intermediate care facilities for
32 the developmentally disabled.

33 (3) *The offer, delivery, receipt, or acceptance of any*
34 *consideration between a federally-qualified health center, as*
35 *defined in Section 1396d(l)(2)(B) of Title 42 of the United States*
36 *Code, and any individual or entity providing goods, items,*
37 *services, donations, loans, or a combination thereof, to the health*
38 *center entity pursuant to a contract, lease, grant, loan, or other*
39 *agreement, if that agreement contributes to the ability of the*
40 *health center entity to maintain or increase the availability, or*

1 *enhance the quality, of services provided to a medically*
2 *underserved population served by the health center, and if the*
3 *transaction otherwise meets the requirements of Section*
4 *1320a-7b(b)(3) of Title 42 of the United States Code and the*
5 *regulations adopted thereunder.*

6 (d) For purposes of this section “kickback” means a rebate or
7 anything of value or advantage, present or prospective, or any
8 promise or undertaking to give any such rebate or thing of value
9 or advantage, with a corrupt intent to unlawfully influence the
10 person to whom it is given in actions undertaken by that person
11 in his or her public, professional, or official capacity.

12 (e) The enforcement remedies provided under this section are
13 not exclusive and shall not preclude the use of any other criminal
14 or civil remedy.